



Signed and Filed: October 12, 2012

A handwritten signature in dark ink, appearing to read "T.E. Carlson".

UNITED
THOMAS E. CARLSON U.S. Bankruptcy Judge
FOR THE NORTHERN DISTRICT OF CALIFORNIA

In re) Case No. 11-30578 TEC
TODD A. TATE,) Chapter 7
Debtor.)
_____)

MEMORANDUM DECISION RE CHRISTOPHER BUTTNER'S AMENDED COMPLAINT

On June 6, 2011, the court entered an order: (1) dismissing the informal adversary complaint filed by Christopher Buttner (Buttner) in the above-captioned case; and (2) requiring Buttner to file and serve an amended complaint on or before July 1, 2011 (the "June 6th Order").

On July 7, 2011, Buttner mailed directly to the court a letter titled "Amended Complaint" along with copies of 17 exhibits (collectively, the "Amended Complaint"). Buttner did not file the Amended Complaint with the Clerk of the Court, and Buttner did not file a certificate of service specifying the date (if any) that Debtor was served with a copy of the Amended Complaint.

The Amended Complaint does not state a claim for relief under 11 U.S.C. § 523(a)(2) for fraud, because the complaint fails to allege: (1) a misrepresentation, a fraudulent omission, or deceptive conduct by the debtor; (2) knowledge of the falsity or

1 deceptiveness of debtor's statement or conduct; (3) intent to
2 deceive; (4) justifiable reliance by the creditor on the debtor's
3 statement or conduct; and (5) damage to the creditor proximately
4 caused by its reliance on the debtor's statement or conduct.

5 Harmon v. Kobrin (In re Harmon), 250 F.3d 1240, 1246 (9th Cir.
6 2001).

7 The Amended Complaint does not state a claim for relief under
8 11 U.S.C. § 523(a)(6) for willful and malicious injury
9 (defamation), because the complaint fails to allege that Debtor
10 subjectively intended to injure Buttner, or subjectively believed
11 that harm was substantially certain to occur, see Carillo v. Su (In
12 re Su), 290 F.3d 1140, 1143-45 (9th Cir. 2002), and because the
13 complaint fails to allege that Debtor published the defamatory
14 statement with the requisite "malice," see Roberts v. Goidel (In re
15 Goidel), 150 B.R. 885, 888 (Bankr. S.D.N.Y. 1993) (plaintiff must
16 establish that debtor knew the statement was false when it was
17 made; reckless disregard for truth or falsity of the statement does
18 not meet the standard for willful and malicious injury within the
19 meaning of section 523(a)(6)).

20 Upon due consideration, because Buttner did not timely file
21 and serve the Amended Complaint pursuant to the June 6th Order, and
22 because the Amended Complaint does not state a claim for relief
23 under section 523(a)(2) or (a)(6), and because Buttner was
24 previously granted leave to file an amended complaint, the court
25 hereby resolves the matter as follows:

26 (1) The Amended Complaint is dismissed without leave to amend.

27 (2) The Clerk of the Court shall promptly enter Debtor's
28 discharge and close the case.

****END OF MEMORANDUM DECISION****

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BUTTNER'S AMENDED COMPLAINT

Court Service List

Christopher Buttner
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Tiburon, CA 94920